

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

Hearing Date/Agenda Number  
P.C. 03/27/02    Item: 3.e

File Number  
CP02-02-007

Application Type  
Conditional Use Permit

Council District  
6

Planning Area  
Willow Glen

Assessor's Parcel Number(s)  
282-43-010

## STAFF REPORT

PROJECT DESCRIPTION Conditional Use Permit to allow live entertainment and an alternating parking arrangement in conjunction with the operation of an existing commercial use.

Completed by: Anastazia Aziz

Location: South Bascom Avenue approximately 750 feet northerly of Fruitdale Avenue (814 S. Bascom Avenue)

Gross Acreage: 0.85

Net Acreage: 0.85

Net Density: n/a

Existing Zoning: CP Commercial

Existing Use: Commercial

Proposed Zoning: No change

Proposed Use: An alternating parking arrangement and live music in conjunction with the operation of an existing commercial use.

### GENERAL PLAN

Completed by: AA

Land Use/Transportation Diagram Designation

General Commercial

Project Conformance:

☒ Yes    ☐ No

☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: AA

North: Commercial

CP Commercial Pedestrian

East: Institutional

R-1-8 Residential

South: Commercial

CP Commercial Pedestrian

West: Institutional

County

### ENVIRONMENTAL STATUS

Completed by: AA

☐ Environmental Impact Report  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: AA

Annexation Title: Maypark No. 4

Date: September 24, 1954

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval  
☒ Approval with Conditions  
☐ Denial

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
☐ Action  
☐ Recommendation

### OWNER

Rajkovich Investment Co.  
P.O. Box 189  
Hollister, CA 95024

### APPLICANT

Verlin E. Hackett  
814 S. Bascom Avenue  
San Jose, CA 95128

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: Anastazia Aziz

Department of Public Works

None received.

Other Departments and Agencies

See attached memorandum from Fire Department.

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**GENERAL CORRESPONDENCE**

None received.

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Verlin Hackett, requests a Conditional Use Permit to allow an alternating parking arrangement after 6:30pm and live music and in conjunction with the existing Espresso Garden Café. A Conditional Use Permit is required for entertainment uses and a Special Use Permit is required for an alternating parking arrangement in the CP Commercial Pedestrian Zoning District. In this case, both the live music entertainment and alternating parking arrangement are folded in to one Conditional Use Permit process.

**Code Enforcement History**

The Police Department alerted Code Enforcement that live music was being performed at the subject location without the benefit of permits. A Compliance Order with a July 2, 2001 compliance date was issued which required the submission of a permit application to the Planning Department for the entertainment use. The tenant failed to apply for the appropriate permit and a subsequent amended Compliance Order was issued stating that live entertainment use must cease by February 15, 2002 if a Conditional Use permit application was not filed on or before that date. On February 6, 2002, the applicant submitted the subject Conditional Use permit.

**Site Conditions and Context**

The café is located in a small strip mall on Bascom Avenue on a 0.85-gross-acre site. The strip mall has a total of four tenants which consist primarily of retail uses. All tenants share a total of 56 on-site parking spaces. Other uses in the strip plaza include Golden Curl Beauty Shop, open 9:00am-5:00pm, Pixel Computer, open 9:30am-7:00pm; and Absolutely Uniforms, open 10:00am to 6:00pm except Thursday when the shop is open until 8:00pm. Espresso Gardens is the only café use in the strip mall. The strip mall currently has limited landscaping and does not meet City of San Jose current landscaping standards.

A variety of commercial uses front onto this stretch of Bascom Avenue including personal service shops, restaurants, and institutional uses including Valley Medical and San Jose City College. Valley Transportation Authority buses Nos. 62 and 25 service the subject site. Bascom Avenue between Fruitdale and Moorpark has a high degree of pedestrian activity because of the large student population associated with San Jose City College and the large workforce employed by Valley Medical Centre.

### **Project Description**

Espresso Gardens is an existing coffee shop/café that serves a variety of beverages and food and beer and wine in a café format and is open from 7:30am to 3pm and 6:30pm to 11:00pm. During the day, the applicant proposes a total of 32 seats. The applicant proposes to allow the performance of live music between the hours of 6:30pm to 11:00pm and to implement an alternating parking arrangement during the evening hours to accommodate up to 85 seats for performances. The applicant has noted that a large portion of their clientele during the day is pedestrian traffic from nearby SJCC and Valley Medical Centre and proposes to install a bicycle rack that can accommodate up to four bicycles at the rear entrance of the building.

### **PUBLIC OUTREACH**

A notice of the public hearing before the Planning Commission was distributed to the owners and tenants of all properties located within 1,000 feet of the project site. Staff has been available to discuss the project with members of the public.

### **ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act.

### **GENERAL PLAN CONFORMANCE**

The existing café and proposed live entertainment use is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of *General Commercial*.

### **ANALYSIS**

The primary project issues include land use compatibility, conformance with Title 20 parking standards, and landscaping.

#### **Land Use Compatibility**

Surrounding uses include commercial uses to the north and south, San Jose City College (SJCC) and multi-family residential uses to the east, and Valley Medical Center is located on the west side of Bascom Avenue.

The proposed use is located in a building that is oriented west, towards Bascom Avenue in keeping with other commercial buildings on the street. Bascom Avenue at this location is a six lane major arterial with parking on either side of the street. A high volume of traffic travels on this portion of the street. The commercial thoroughfare character of the street is appropriate for commercial uses and live entertainment uses.

San Jose City College (SJCC), an existing post-secondary school and residential multi-family uses on Rexford Way, are both located to the east of the subject site. The distance between the Espresso Gardens and Café building and the closest multi-family residential use is approximately 350 feet and the building is over 600 feet in walking distance from the nearest building on SJCC campus. To date there have been no citizen complaints regarding noise related to the existing commercial use or the unpermitted live entertainment. Given the orientation of the building towards the west away from SJCC and the residential uses, and the distance between the uses, the live entertainment use is not expected to create unwarranted nuisance noise. Additionally, live entertainment is generally a compatible and appropriate use in proximity to a college campus.

Valley Medical Center is located on the opposite side of Bascom Avenue at the terminus of Renova Drive. A Valley Medical parking lot is directly across from Espresso Gardens. The hospital is located over 1,000 feet from the subject site and the proposed live entertainment use will not create additional noise impacts on the hospital use.

Based on the above analysis, staff the proposed live entertainment use is located appropriately on Bascom Avenue and is compatible with the surrounding uses.

### **Alternating Parking Arrangement**

The applicant has provided an alternate parking analysis for the subject site (see attached). From 7:30am to 3:00pm Espresso Gardens and Café proposes a total of 32 seats which generates a requirement of 13 parking spaces. Existing on-site parking is adequate to serve the proposed use in combination with the other retail uses in the strip plaza.

The applicant proposes to increase seating at Espresso Gardens and Café between the hours of 6:30 and 11:00pm to 85 seats which requires a total of 34 parking spaces. Other retail uses that are open after 6:30pm include Pixel Computers which is open until 7:00pm and requires 23 parking spaces and Absolutely Uniforms which is open on Thursdays until 8:00pm and requires a total of 17 parking spaces.

On all days save Thursday, the combination of tenants that are open after 6:30pm, namely, Espresso Gardens and Café and Pixel Computers require a total of 57 parking spaces, one space more than is provided on the site. Likewise, on Thursdays, Pixel Computers is open between 6:30 through 7:00pm, and Absolutely Uniforms is open between 6:30pm through 8:00pm. The required parking between 6:30pm and 7:00pm generated by all three uses is 72 parking spaces which is in excess of the 56 available parking stalls. In order to meet the parking requirement, staff recommends conditioning Espresso Gardens and Café to limit the commencement of the entertainment use to no earlier than 7:00pm. By conditioning the subject proposal, the proposed alternating parking arrangement will meet the requirements of Title 20.

**Landscaping**

The subject site was developed in the 1960's and landscaping on the 0.85 gross acre site is limited to narrow landscape strips along the southern and northern edges of the property. Because there is very limited room on the site to accommodate additional landscape areas, staff has conditioned the subject permit to require planters with plants on the front patio area to soften the hardscape area.

**CONCLUSION**

Based on the above conditions, staff concludes that the Espresso Garden Café is located and oriented in such a manner that the live music would not adversely affect proximate residential and institutional uses, and the alternating parking arrangement would comply with Title 20.

**RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The site is located in the CP Commercial Pedestrian Zoning District which allows live music and alternating parking arrangements subject to approval of a Conditional Use Permit.
3. The applicant proposes to offer performance of live music in conjunction with the operation of an existing commercial use between the hours of 6:30pm –11:00pm and proposes an alternating parking arrangement.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment. The project is subject to San Jose Municipal Code Section 20.28.260, which regulates off-sale of alcohol.
5. The proposed use is located 350 feet from the closest residential use, over 600 feet in walking distance from the closest San Jose City College building, and over 1,000 feet from Valley Medical hospital building.
6. The café's front entry is oriented towards Bascom Avenue, away from the adjacent residential uses, in keeping with the other commercial uses located on Bascom Avenue.
7. A café with live music is an appropriate use for the proposed location and compatible with adjacent uses.

8. From 7:30am through to 3:00pm Espresso Gardens and Café proposes a total of 32 seats which generates a requirement of 13 parking spaces which complies with the total parking provided on site in combination with the other retail uses in the strip plaza.
9. The applicant proposes to increase seating at Espresso Gardens and Café between the hours of 6:30p.m. to 11:00p.m. to 85 seats which requires a total of 34 parking spaces.
10. Other retail uses that are open after 6:30pm includes Pixel Computers which is open until 7:00pm and requires 23 parking spaces and Absolutely Uniforms which is open on Thursdays until 8:00pm and requires a total of 17 parking spaces.
11. On all days save Thursday, the combination of tenants that are open between 6:30pm through 7:00pm namely, Espresso Gardens and Café and Pixel Computers, require a total of 57 parking spaces.
12. On Thursdays, Pixel Computers is open until between 6:30 and 7:00pm, and Absolutely Uniforms is open between 6:30pm through 8:00pm. The required parking between 6:30pm and 7:00pm generated by all three uses is 72 parking spaces which is in excess of the 56 available parking stalls.
13. The project shall be to limit the commencement of the entertainment use to no earlier than 7:00pm in order to comply with Title 20 parking requirements.
14. With issuance of the subject conditioned Conditional Use Permit, the proposed use would meet the requirements of Title 20.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance because the subject commercial establishment is located and oriented in such a manner that the live music would not adversely affect proximate residential, school and medical uses.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The number of off-street parking spaces provided in such parking facilities adequately meets the parking requirements of the individual buildings and uses as specified in this Chapter 20.90 of this Title.
5. It is reasonably certain that the parking facility shall continue to be provided and maintained at the same location for the service of the building or use for which such facility is required, during the life of the building or use; and

6. The parking facility is reasonably convenient and accessible to the buildings or uses to be served.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Site Plan," dated February 4, 2002 on file with the Department of Planning, Building and Code Enforcement and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
2. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. The approval authority may impose substantive conditions designed to decrease sanitary sewage associated with any land use approval.
3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Hours of Operation.** This commercial facility shall not operate between the hours of 12:00 midnight and 7:00 A.M.
5. **Alcohol Sales.** The sale of alcohol shall conform to the requirements of the Liquor License requirements of the Department of Alcoholic Beverage Control.
6. **Alternating Parking.** Operation of the entertainment use of the size permitted in this permit is contingent upon availability of parking as identified in the Alternate Parking Analysis for 814 S. Bascom Avenue. The applicant shall notify the Director of Planning in writing of any reduction in the parking availability.
7. **Maximum Number of Seats.** A maximum of 85 seats shall be permitted after 7:00pm. The entertainment use shall commence no earlier than 7:00pm.
8. **Fire Department.** Occupancy shall be in conformance with all Fire Department regulations.
9. **Landscaping.** A total of three planters with vegetation shall be provided on the front patio.



10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

C: Building Division (2)  
Engineering Services